



COUNTY OF LOS ANGELES
REGISTRAR-RECORDER/COUNTY CLERK
P.O. BOX 53130, LOS ANGELES, CALIFORNIA 90053-0130 / (562) 462-2078

CONNY B. MCCORMACK
REGISTRAR-RECORDER/COUNTY CLERK

March 30, 2007

Via FAX and U.S. Mail

Honorable Debra Bowen
California Secretary of State
1500 11th Street - 6th Floor
Sacramento, CA 95814

Dear Secretary Bowen:

This responds to your offer to accept public comment through today regarding the document released by your office on March 22, 2007 entitled TOP-TO-BOTTOM REVIEW OF ELECTRONIC VOTING SYSTEMS CERTIFIED FOR USE IN CALIFORNIA ELECTIONS.

By reference, I am incorporating the March 26, 2007 response submitted by the California Association of Clerks and Election Officials (CACEO) into my comments and recommendations (Attachment 1). My additional comments focus on four specific areas: context/background, timing, objectivity and cost of the review.

Context/Background

Beyond the exercise of reviewing currently certified voting systems under a pre-determined set of criteria, the draft criteria document is unclear regarding what the review is intended to accomplish or, due to the absence of enumerated measurement criteria, what a successful outcome would look like.

It is also important to note that no thorough review of voting systems is truly complete if it occurs solely in a testing environment. It should also encompass observation and analysis of the experiences of voters utilizing voting equipment in conjunction with an actual election. Due to the announcement several months ago of your intention to conduct a "top-to-bottom" review of voting systems, the City Clerk of Los Angeles and I sent you a letter on February 21, 2007 (Attachment 2) inviting you to observe the two voting systems and processes that would be used in conjunction with the March 6, 2007 Los Angeles City election involving 2,126 voting precincts on Election Day and 16 early voting sites that were in operation beginning two weeks prior to the election. This is the same voting equipment that was used by Los Angeles County for the November 7, 2006 statewide election. We were both disappointed that you did not respond to the letter, nor did you or any of your senior staff take advantage of this observation opportunity.

This followed a previous invitation that I extended to you through Chief Deputy Secretary of State Evan Goldberg in November 2006 to observe the extensive auditing of election results and de-processing of voting equipment which occurred during the four weeks following the November 7, 2006 election prior to official certification of election results. I understand a similar invitation was extended to you by the Sacramento County Registrar of Voters during that same timeframe. However, neither invitation was accepted. I would like to again invite you and senior staff to observe the May 15, 2007 elections taking place at over 2,200 voting precincts in Los Angeles. These elections will involve the runoffs from the March 6, 2007 election noted above as well as the Special Election for the 39th State Assembly District due to the recent vacancy in that legislative district.

There are likely numerous other elections occurring throughout the State this spring that would also afford invaluable opportunities for observation and voting system(s) review. I would like to add that several representatives from various advocacy and voter activist groups personally observed our operations both on Election Day and during the vote canvassing period in conjunction with the November 7, 2006 election which included the initial rollout of Los Angeles County's new InkaVote *Plus* voting system. Several expressed the opinion that such observation was beneficial toward gaining a more in-depth understanding of the operations of voting systems and processes.

Throughout your draft criteria for voting systems review, and in the accompanying introduction, references are made seven times to the potential of de-certifying voting systems currently in use in California. Additionally, the document, especially as described in Section II 2 (a) – (e), contains criteria that mandate disability access features that are not required by either Federal or State law. These specific criteria would seem to point to a pre-determined outcome involving only one, or possibly two, voting systems. Los Angeles County's InkaVote *Plus* voting system would not appear to meet these stated criteria. I strongly believe the review criteria should be less subjective and encompass the current federal and state legal requirements. This opinion was also expressed in the position paper submitted by the CACEO regarding the review.

Each of the voting systems currently in use in California has been federally approved and, for those that were state tested within the past 17 months¹, all passed the most comprehensive voting system requirements of any testing processes in the U.S. prior to state certification.

A brief overview of key milestones with regard to state certification and de-certification of voting systems over the past four years is instructive to illustrate the turmoil California counties have experienced and had to overcome with regard to use of voting systems:

¹ The exception is the Automark system which was state certified two months prior to October 5, 2005. That was the date that SOS Bruce McPherson adopted the most comprehensive voting system certification criteria in the U.S. Therefore, Automark is the only system in use in California which has not been required to pass a stringent volume test for accuracy and reliability.

September 18, 2001

Secretary of State (SOS) Bill Jones de-certified pre-scored punch card voting equipment that was in use in most large California counties, including Los Angeles County for 33 years. Although SOS Jones' announcement set a July 2005 effective date, subsequent court action accelerated the de-certification date, requiring replacement equipment to be operational in time for the March 2004 Presidential Primary Election.

October 29, 2002

Federal Help America Vote Act (HAVA) was signed into law establishing new national voting equipment requirements effective January 1, 2006. HAVA required voting equipment to include the capacity for disabled voters, including those who are blind, to vote privately and independently. At the time only Direct Recording Electronic (DRE) voting systems included this capability. HAVA also required "second chance" voting, i.e. alerting voters if they had made a mistake, such as overvoting a contest, to provide the opportunity to make a correction prior to casting the ballot.

February 10, 2003

SOS Kevin Shelley created Ad Hoc Touch Screen Task Force to study and make recommendations on possible improvements in the security of DRE voting systems.

May 28, 2003

SOS Shelley released report of Ad Hoc Touch Screen Task Force. Majority of Task Force members did not recommend requiring a voter verified paper audit trail (VVPAT) to be attached to DREs. The Task Force did recommend that the SOS should conduct parallel monitoring tests of each type of DRE equipment in real time throughout the 13 hours of voting on Election Day to confirm whether or not each system is operating accurately.

November 21, 2003

Despite the recommendation of his Task Force to the contrary, SOS Shelley announced that, beginning July 1, 2006, no county or city may purchase a DRE system that does not include an accessible voter verified paper audit trail (VVPAT). Additionally, as of July 2006, SOS Shelley decreed that all DRE systems used in California, regardless of when purchased, must be equipped with a VVPAT.

February 5, 2004

SOS Shelley directed counties using DRE voting equipment to undertake additional security measures for the March 2004 Primary Election. One of the security measures involved the SOS hiring independent contractors to conduct parallel monitoring tests of DREs on Election Day.

April 20, 2004

SOS Shelley issued a report on the March 2, 2004 Primary Election. Included in the report are the findings of the Election Day parallel monitoring report which stated: "Results of the reconciliation analysis indicate the DRE equipment tested on March 2, 2004 recorded the votes as cast with 100% accuracy."

April 30, 2004

Despite findings of 100% accuracy of DRE systems published in his report ten earlier, SOS Shelley issued de-certification orders for all DRE voting equipment used in California. Conditions for re-certification required counties using DREs to either install a VVPAT (none of which were available at that time) or implement a set of additional security measures before he would re-certify DREs for use for the November 2004 Presidential Election.

June - July 2004

SOS approved agreements with ten counties to use their DREs for the November 2004 election but refused to re-certify DREs used in four counties. It was later discovered that the SOS signed agreements with various counties that provided for different levels of compliance regarding the announced "requirements."

September 27, 2004

Governor signed SB1438 (Chapter 814) which required DREs to be equipped with an accessible VVPAT and established the following dates and conditions: January 1, 2005 prohibited SOS from approving a DRE system without VVPAT; January 1, 2006 prohibited any city or county from contracting for or purchasing a DRE system without VVPAT.

February 4, 2005

SOS Shelley announced his resignation.

March 30, 2005

Governor appointed Bruce McPherson as SOS.

May 8, 2005

Officers of the California Association of Clerks and Election Officials (CACEO) met with SOS McPherson to discuss certification of voting systems. At that time there were no state certified voting systems for counties to acquire in order to meet the requirements of the federal Help America Vote Act (HAVA), despite the imminent deadline for compliance (January 1, 2006).

August 3, 2005

SOS McPherson certified Automark voting equipment. It was the first, and at that time the only, system certified to meet 2006 federal and state requirements despite the looming legal deadline a mere five months away.

October 5, 2005

SOS McPherson announced new voting system certification criteria (Attachment 3). The criteria included the ten most stringent requirements in the U.S., including proof of federal certification and stringent volume testing for all future system certifications.

December 1, 2005

CACEO held statewide meeting in Sacramento where the lack of available certified voting equipment was decried by county election officials at a time when the deadline for compliance with federal and state laws was one month away and the first statewide election requiring new equipment to be in place was only seven months away (June 6, 2006).

February - April 2006

After more than eight months of testing, including volume testing, the SOS certified Diebold, Sequoia, Hart InterCivic and ES&S InkaVote Plus voting systems. All met the ten stringent voting system criteria the SOS established in October 2005.

June 6, 2006

Statewide Primary Election containing federal, state and local contests. Due to delays in the state certifications of voting systems, seven counties, including Los Angeles County, were unable to implement new voting systems for this election and, therefore, were out of compliance with federal and state legal requirements for this statewide election.

November 7, 2006

Statewide General Election containing federal, state and local contests. All 58 California counties implemented voting equipment that complied with federal and state laws and successfully conducted the election.

January 5, 2007

SOS McPherson released the results of independent parallel monitoring testing of DRE voting systems used on November 7, 2006. Once again, like the results of parallel monitoring of SOS Shelley regarding the March 2004 statewide election, the results reflected 100% accuracy of the DRE voting systems.

Timing

The draft criteria for voting systems review focuses solely on the dates of the three statewide elections taking place in February, June and November of 2008. It fails to acknowledge that elections occur throughout each year. For example, the upcoming November 6, 2007 elections involve millions of registered voters in approximately half of the State's counties, including Los Angeles County. Should you choose to de-certify any of the voting systems in August 2007 (the timeline mentioned in your document), what message would that send to those millions of voters who will be voting on those same voting systems this November? These are the same voting systems that accurately and securely counted the votes of over eight million voters for the November 7, 2006 statewide election.

In a letter you sent on March 22, 2007 (Attachment 4) to Congresswoman Zoe Lofgren, Chairwoman of the Subcommittee on Elections of the U.S. House Administration Committee, you made the following statement with regard to several election administration bills now pending at the federal level: "The last thing any of us want is to truncate public review of any system, rushing through approval under the presumption that any solution is better than the current system, only to find ourselves back here in two or three years, having this same discussion all over again." Your words are equally applicable to the proposed review of voting systems currently in use in California.

Your letter to Congresswoman Lofgren also provides examples of California counties with between 91,000 and 418,000 registered voters requiring eight to nine months to procure and implement new voting systems. Clearly, in a jurisdiction the size of Los

Angeles County with 3.8 million registered voters, the impact is greatly magnified several times over.

Objectivity

Just as it is important to clearly set forth the voting systems review criteria, it is crucial to establish the objectivity and credibility of those you choose to participate in and oversee this exercise. A separate set of criteria should be disclosed listing the professional credentials, applicable experience and conflict of interest standards that will be applied to the individuals, organizations or institutions selected to conduct the review. The selection process itself should be publicly disclosed and transparent.

An additional measure of objectivity should be considered with regard to any decision of the magnitude involving potential de-certification of a voting system(s). Democracy, the political system upon which our country is built, involves appropriate checks and balances as opposed to bestowing unilateral authority in one official. In researching the California Elections Code, in years past a multi-agency Voting Systems Commission was empowered to make decisions with regard to approval or de-certification of voting systems. Up until the 1980s, that Commission was comprised of the Secretary of State, the Governor and the Attorney General and also included involvement of the Chairs of the Elections Committees in the California Assembly and Senate. The Commission was disbanded in the early 1980s, apparently due to a lack of activity with regard to voting systems. At that time, state law was changed to empower the Secretary of State with complete authority involving such voting equipment decisions. Restoring appropriate oversight and re-introducing checks and balances into this process appears warranted at this time. As such I have spoken with the Chairs of the Assembly and Senate Elections Committees and have followed up those conversations with a letter in this regard (Attachment 5).

Cost of Review

The proposed top-to-bottom review of all voting systems in use in California will likely entail significant cost. The extensive scope of the review will surely exceed the expenses associated with past parallel monitoring tests of voting equipment (as described above) which I understand cost approximately \$250,000 per statewide election. I believe your office recently presented your annual budget request to the state legislature. Does your budget include itemized funding to conduct parallel monitoring tests for the three statewide elections in 2008? Does your budget include itemized funding to carry out this review? Other registrars of voters in addition to me are interested in learning about the anticipated cost of such a review. Please consider this a formal request for all correspondence and other documentation your office has assembled regarding expenses associated with carrying out a top-to-bottom review of voting systems.

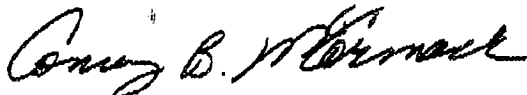
Conclusion

I appreciate the opportunity to comment on the draft criteria for your proposed top-to-bottom review of electronic voting systems certified for use in California elections. However, the compressed 8-day timeline allotted for response was far too short. Consequently, it did not enable County Boards of Supervisors, who have the responsibility to purchase voting systems to comply with federal and state laws, to set this item for discussion at a regular Board meeting.² In the past five years, County Boards of Supervisors in all 58 California counties have expended between \$175 and \$200+ million to purchase new voting equipment in order to comply with the new federal and state laws.

The California State Association of California (CSAC) did submit a brief response (Attachment 6) expressing "significant concerns with the Draft Criteria as written." The CSAC response further indicated: "A complete review and possible decertification of voting systems at this critical juncture in the electoral process, with the newly created Presidential Primary election a mere ten months away, will cause untold disruption for counties, the state of California, and most importantly, registered voters."

I look forward to your response to the concerns, requests and recommendations in this letter as well as those contained in the position paper submitted by the CACEO. I reiterate the need for extending the public comment period to the typical, governmental agency time period of 30 days following the next iteration of your review criteria.

Sincerely,



Conny B. McCormack
Registrar-Recorder/County Clerk

- c: Honorable Ronald S. Calderon, Chairman, Senate Elections and Reapportionment Committee
Honorable Curren D. Price, Chairman, Assembly Elections Committee
Members, Los Angeles County Board of Supervisors
David E. Janssen, Chief Administrative Officer, County of Los Angeles
Stephen L. Weir, President CACEO
Frank T. Martinez, City Clerk, City of Los Angeles

² The deadline for submission of an item to be docketed on the regular agenda for a meeting of the Board of Supervisors is 12 days prior to the meeting date. By issuing the draft criteria on March 22 with a March 30 deadline for response, only 8 days was permitted.

OFFICERS 2006-2008

STEVE WEIR
PRESIDENT
Contra Costa County
524 Main Street
Martinez, CA 94553
(925) 646-2955
sweir@cr.cccounty.us

REBECCA MARTINEZ
VICE PRESIDENT
Madera County

MIKEL HAAS
TREASURER
San Diego County

GAIL PELLERIN
SECRETARY
Santa Cruz County

BOARD OF DIRECTORS
APPOINTED:

JANICE ATKINSON
Sonoma County
DARLENE BLOOM
Orange County
CATHY DARLING
Shasta County
CANDACE GRUBBS
Butte County
JOSEPH HOLLAND
Santa Barbara County
DEAN LOGAN
Los Angeles County
JOHN MCKIBBEN
Los Angeles County
KATHIE MORAN
Colusa County
DOLORES PROVENCIO
Imperial County
ELMA ROSAS
Santa Clara County
KAY VINSON*
City Clerk, Murietta
*non-voting member

ELECTED:

JULIE BUSTAMANTE
Northern Area
Lassen County
BARBARA DUNMORE
Southern Area
Riverside County
CANDY LOPEZ
Bay Area
Contra Costa County
LEE LUNDRIKAN
Central Area
Stanislaus County
JIM MCCAULEY
Mother Lode Area
Placer County

ADVISORY COUNCIL
CONNY MCCORMACK
Los Angeles County
MARSHA WHARFF
Mendocino County

LEGISLATIVE COMMITTEES

CLERK OF THE BOARD:

SACHI A. HAMAI
Los Angeles County

COUNTY CLERK:

KATHIE MORAN
Colusa County
VICKI PETERSEN
Sonoma County

ELECTIONS:

JILL LAVINE
Sacramento County
DEBORAH SEILER
Solano County



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

Stephen L. Weir, President
Contra Costa County Clerk-Recorder
524 Main Street, Martinez, CA 94553
(925) 646-2955; FAX (925) 646-2836
E-MAIL: sweir@cr.cccounty.us

ATTACHMENT 1

March 26, 2007

The Honorable Debra Bowen
California Secretary of State
1500 - 11th Street, Suite 600
Sacramento, CA 95814

Dear Secretary Bowen:

DRAFT CRITERIA FOR A TOP-TO-BOTTOM REVIEW OF ELECTRONIC VOTING SYSTEMS

On behalf of the California Association of Clerks and Election Officials (CACEO), I am transmitting the attached position paper in response to your request for public comment on the Draft Criteria for a Top-to-Bottom Review of Electronic Voting Systems released by your office on March 22, 2007.

The position paper affirms our members' commitment to the security, reliability, accessibility and integrity of voting systems used in California and expresses our concerns with regard to the scope and timing of the proposed review. Additionally, the position paper includes suggestions and comments on some of the specifics outlined in the draft criteria.

As an Association, we recognize the public is best served through a cooperative partnership between local election officials and the Secretary of State. Our membership welcomes the opportunity to have representation in any voting-systems review process and to make available our collective experience and background, as election professionals, to ensure the effectiveness of a project of this magnitude and significance.

We look forward to your response to the suggestions and concerns raised in our position paper. Individually and collectively we will continue to discuss and review the draft criteria and will submit additional comments to your office accordingly. If you would like to meet with our Executive Board to discuss any of the issues raised in our response, we would be happy to do that as well.

Sincerely,

Stephen L. Weir, CACEO President
Contra Costa County Clerk-Recorder

SLW:ceb

OFFICERS 2006-2008**STEVE WEIR
PRESIDENT**

Contra Costa County
524 Main Street
Martinez, CA 94553
(925) 646-2955
sweir@cr.cccounty.us

**REBECCA MARTINEZ
VICE PRESIDENT**

Madera County

**MIKEL HAAS
TREASURER**

San Diego County

**GAIL PELLERIN
SECRETARY**

Santa Cruz County

**BOARD OF DIRECTORS
APPOINTED:****JANICE ATKINSON**

Sonoma County

DARLENE BLOOM

Orange County

CATHY DARLING

Shasta County

CANDACE GRUBBS

Butte County

JOSEPH HOLLAND

Santa Barbara County

DEAN LOGAN

Los Angeles County

JOHN MCKIBBEN

Los Angeles County

KATHIE MORAN

Colusa County

DOLORES PROVENCIO

Imperial County

ELMA ROSAS

Santa Clara County

KAY VINSON*

City Clerk, Murietta

* non-voting member

ELECTED:**JULIE BUSTAMANTE**

Northern Area

BARBARA DUNMORE

Lassen County

GANDY LOPEZ

Southern Area

LEE LUNDRIGAN

Riverside County

LEE LUNDRIGAN

Central Area

JIM MCCAULEY

Stanislaus County

MARSHA WHARFF

Mother Lode Area

CONNY MCCORMACK

Placer County

ADVISORY COUNCIL**CONNY MCCORMACK**

Los Angeles County

MARSHA WHARFF

Mendocino County

LEGISLATIVE COMMITTEES**CLERK OF THE BOARD:****SACHI A. HAMAI**

Los Angeles County

COUNTY CLERK:**KATHIE MORAN**

Colusa County

VICKI PETERSEN

Sonoma County

ELECTIONS:**JILL LAVINE**

Sacramento County

DEBORAH SEILER

Solano County



CALIFORNIA ASSOCIATION OF CLERKS AND ELECTION OFFICIALS

Stephen L. Weir, President
Contra Costa County Clerk-Recorder
524 Main Street, Martinez, CA 94553
(925) 646-2955; FAX (925) 646-2836
E-MAIL: sweir@cr.cccounty.us

March 26, 2007

CACEO POSITION PAPER ON THE SECRETARY OF STATE'S PROPOSED TOP-TO-BOTTOM REVIEW OF ELECTRONIC-VOTING SYSTEMS CERTIFIED FOR USE IN CALIFORNIA ELECTIONS

The California Association of Clerks and Election Officials (CACEO), takes this opportunity to comment on Secretary of State Debra Bowen's draft "top to bottom" review proposal, which was received on March 22nd.

As public officials, and as the election professionals charged with the responsibility of conducting fair, accurate, secure and accountable elections, members of the CACEO support rigorous testing and review of voting systems. Our members recognize the importance of ensuring the integrity of voting systems and providing access for all eligible citizens to participate in our country's fundamental democratic process.

Much has occurred in our state in the years and election cycles since the historically-close Presidential Election of 2000. In short order and despite regulatory disruption, California successfully implemented new voting systems by 2006 in all 58 counties that meet the sweeping changes and rigorous standards mandated by the Help America Vote Act (HAVA) passed by Congress in 2002. The voting systems in use in California today exceed national certification requirements and have been tested and certified under more rigid technical and security standards as adopted by the State of California.

These systems and the administrative structure behind them performed exceptionally well in the November 2006 Election when over 8 million voters statewide successfully cast ballots, which were counted accurately and securely.

All California voting systems already produce paper-based verifiable ballots for every vote cast. Additionally, a sample of these paper-based ballots is randomly selected for auditing against computer-generated vote totals prior to official certification of results. These are the key provisions included in federal legislative proposals currently pending before the U.S. Congress in preparation for the 2008 elections.

On the surface, the concept of a top-to-bottom review of all voting systems sounds reasonable. In fact, the CACEO offered Secretary Bowen assistance in developing criteria for this review that would be meaningful and effective. On

CACEO POSITION PAPER

March 26, 2007

Page 2

February 5, 2007, the CACEO issued the following statement as part of "CACEO Position Paper on the Addition of a February Presidential Primary:"

Given Secretary of State Debra Bowen's announced plan to conduct a top to bottom review of voting systems, the state association of elections officials has asked that it be conducted in an orderly, fair, comprehensive and inclusive manner. Criteria for the review should mirror national standards and should be carefully crafted prior to commencement to ensure that the elections process is not disrupted or unintentionally put at risk due to compressed timeframes or untested procedures. A review of all systems should be undertaken to avoid singling out a specific company or type of technology.

In view of the fact that independent parallel monitoring of all electronic-voting systems used in the 2004 and 2006 elections documented 100% accuracy of results, counties urge state administrators to avoid any significant or systemic changes on the eve of the most complex and crowded election cycle in recent memory.

Against this backdrop, and in view of the draft standards we received, our comments address three levels. First, we believe that the suggested criteria are not comprehensive and merit extensive additional comment and refinement. Second, we believe that the time provided for comment is insufficient and the criteria sufficiently ambiguous that extending the abbreviated comment period is imperative. Third, we have specific questions and concerns about the review criteria as they exist in draft form.

Scope of Review

The draft standards are not sufficiently comprehensive and merit extensive additional comment and refinement.

There are several basic tenets of elections that are commonly accepted by election professionals:

- Accuracy
- Privacy
- Reliability
- Security
- Accessibility for Voters with Specific Needs
- Speed of Counting and Results Reporting

All voting systems must meet some threshold level of each of these tenets, though it is widely understood that some systems perform better in some of these categories than others. The U.S. Elections Assistance Commission (EAC) and its predecessor agencies have endeavored, through the ongoing development of voting-systems standards, to ensure that voting systems either meet all of these requirements or are used in combination with other voting devices to do so.

CACEO POSITION PAPER

March 26, 2007

Page 3

The CACEO believes that any top-to-bottom review should take all these tenets into account. In addition, we believe the review should clearly list every voting system as well as every combination of systems currently in use and set forth the criteria for each of the basic tenets, i.e., accuracy, reliability, security, etc. A complete list of systems, combined with a full spectrum of measurement and a clearly delineated threshold for what is acceptable and what is not, is essential for a fair and orderly review.

In addition to the scope of the review, we have concerns about the identity and qualifications of those conducting it. We suggest Secretary Bowen should establish clear criteria for those selected to conduct the review and publish the selection criteria and the credentials of those selected prior to its commencement.

We also suggest including as reviewers Dave MacDonald of Alameda County and Ira Rosenthal of Solano County, who serve both as Chief Information Officer (CIO) and as Registrar of Voters (ROV) of their respective counties. Both possess exceptional credentials and first-hand elections experience. They have agreed to perform this service along with Los Angeles County's CIO, Jon Fullinwider, who is independent of the ROV and has oversight over all technology purchases and implementations in the largest elections jurisdiction in the country.

Timing

There are two timing issues that concern us.

Only Six Working Days to Comment

First, we are concerned that we have been given only six working days to comment on these criteria, which we understand the Secretary's staff has been working on for many weeks. As opposed to the standard 30-day public review and comment period typically associated with a public process of this magnitude, Secretary Bowen has offered this restrictive timeframe with no mention of a process by which initial public input will be assessed, disclosed or incorporated into the final review criteria.

We suggest a minimum 30-day public review period and request that an additional review and comment period be allotted for subsequent drafts that emerge following input.

Potential Conflict with 2008 Presidential Election Cycle

Second, we believe a meaningful top-to-bottom review needs to occur within a timeframe that does not disrupt the electoral process. This review process must be methodical and well-defined as well as recognize the practical realities of election administration in the real world. Our concern is that the timeline suggested in the draft review for decertifying current state- and federally-certified voting systems prior to the pending 2008 Presidential Election cycle would destabilize California elections.

We believe Secretary Bowen should be mindful that proposing this review while elections legislation, which could amend federal voting system standards, is pending in Congress could

CACEO POSITION PAPER

March 26, 2007

Page 4

deplete resources, cause chaos for election administrators, and create an unsubstantiated sense of crisis among the electorate. Of far greater importance is the need for state and local elections officials to work cooperatively to ensure continued success and transparency of the elections process as we prepare for three major statewide elections in 2008, starting in ten months with California's first-ever February Presidential Primary Election.

Specific Draft Review Criteria Concerns

- Scope

The stated goal of the draft criteria is "to determine whether currently certified voting systems provide acceptable levels of security, accessibility, ballot secrecy, accuracy and usability," but they do not contain any criteria to measure accuracy or reliability. Clear, measurable standards are necessary to evaluate all the basic tenets of elections and a threshold for determining what constitutes an acceptable level must be agreed upon and promulgated prior to any testing.

- Accuracy

There are no standards for the assessment of accuracy in the draft criteria. It is the position of the CACEO that all systems, including all paper-based systems, should undergo some analysis of accuracy.

- Reliability

It is the position of the CACEO that all systems should undergo a volume test as a minimum requirement of any review to assess the basic reliability of all equipment and software currently in use. This test should include an analysis of the durability of equipment that must be transported to polling places.

- Security Testing

The draft standards contain no comparison between the relative security risks for paper-based optical scan and direct recording electronic (DRE) systems. The proposed criteria appear to focus exclusively on DRE's. For example, the reference to "untraceable vote tampering" refers to electronic recording of votes only. It does not mention or recognize the potential for "untraceable vote tampering" using paper ballots. The document should contemplate the comparative opportunities for a security breach between the two types of systems.

The security criteria refer to "vote tabulating devices," and we believe these should be enumerated specifically. Again, we believe a complete taxonomy of systems and blended systems should be prepared and clearly defined tests, with precise standards and stated outcomes, should be conducted.

The proposed "red team" concept disregards the real-world election environment and the security of currently certified systems that have performed accurately in recent past

CACEO POSITION PAPER

March 26, 2007

Page 5

elections. In order for a "red team" exercise to be legitimate, a contrasting "blue team" is required to ensure relevance and comparison. The proposed review criteria do not contain this balance.

The proposed "red team" concept also contemplates giving attackers access to source code, which is unrealistic and dangerous if not strictly controlled by test protocols. It is the considered opinion of election officials and information technology professionals that ANY system can be attacked if source code is made available. We urge the Secretary of State not to engage in any practice that will jeopardize the integrity of our voting systems.

- **Source Code Review**

The source code review section is vague, seemingly arbitrary, and contains no clear and measurable requirements. Since source code is already reviewed by independent testing authorities under standards developed by the EAC, it is critical to outline how this proposed source code review will differ from the EAC-sponsored review already conducted.

- **Disability Access Standards**

The draft review standards focus exclusively on a single feature, an "accessible" voter-verified paper-audit trail (VVPAT). While federal and state standards exist for the VVPAT, currently there is no definition of or standards for an "accessible" VVPAT.

- **Disability Access Testing**

The proposed disability access testing standards impose criteria exclusive to one or two voting systems. For example, requiring a "sip and puff" device is overly prescriptive and does not contemplate alternate devices such as a head stick or mouth stick commonly available to quadriplegic voters.

There are no accessible voting devices that are 100% perfect for all types of disabilities. The narrow focus of the proposed criteria suggest a predetermined outcome that is inconsistent with an October, 2003 U.S. Department of Justice opinion stating that voting devices containing features to serve persons with disabilities are not required to be identical to all other voting devices. The opinion concluded that the VVPAT type device used in California did not contravene section 15481 (a)(3)(A) of the Help America Vote Act.

Finally, the review criteria make no mention of the reliability of accessible voting devices, which has varied widely among the systems currently in use.

- **Impact to the Election Cycle**

The Secretary's document solely focuses on the 2008 election cycle. It fails to consider scheduled elections involving millions of voters in November 2007. Preparing for elections is a year-round process in California.

CACEO POSITION PAPER

March 26, 2007

Page 6

Conclusion

The CACEO is dedicated to serving the voters of this state and to ensuring that all voting systems, practices and procedures promote the goals of accuracy, privacy, reliability, security, accessibility for voters with specific needs and speed of counting and reporting results. Any top-to-bottom review should adequately assess all of these basic tenets in a manner that is clear and equitable and that defines measurable objectives.

The advantage of a comprehensive voting-system review is the affirmation that our voting systems in California meet the high standards deserving of the largest voting population in the United States. There is a huge downside for the voters of California if this process is mismanaged or is not carried out timely, thoroughly and equitably.

SLW:ceb

FRANK T. MARTINEZ
CITY CLERK

KAREN E. KALFAYAN
EXECUTIVE OFFICER

CITY OF LOS ANGELES
CALIFORNIA



ANTONIO R. VILLARAIGOSA
MAYOR

OFFICE OF THE
CITY CLERK
ROOM 360, CITY HALL
LOS ANGELES, CA 90012
(213) 878-1020
FAX (213) 878-1027

ATTACHMENT 2

February 21, 2007

The Honorable Debra Bowen
Secretary of State
1500 11th Street, 6th Floor
Sacramento, California 95814

Dear Secretary Bowen:

It is our understanding that a key priority of your new administration involves preparation and planning to conduct a "top to bottom" review of all voting systems used in California. The City of Los Angeles is administering an election on March 6, 2007 which would provide excellent opportunities for you and key members of your staff to observe voters interacting with two types of voting equipment that will be used in conjunction with this major election: Diebold TSX and InkaVote Plus equipment. Because the County of Los Angeles (County) owns the voting equipment, the City of Los Angeles (City) has entered into a contractual Agreement with the County to utilize the equipment for elections conducted by the City (copy of Agreement available upon request). The key reason for the Agreement is to provide voters with a consistent voting experience whether the election is conducted by the City or the County. A brief description of the use of the equipment is outlined below:

- The Diebold TSX voting equipment is used in conjunction with the Early Voting period which began Tuesday, February 20, 2007 and continues through Friday, March 2, 2007 at 16 locations throughout the City (a list of locations including days and hours of voting at each site is available on the City Clerk's web site: <http://cityclerk.lacity.org/election/>).
- The InkaVote Plus voting equipment will be used at 2,126 voting precincts on March 6, 2007 (list of locations available upon request. Voting will take place between 7 a.m. and 8 p.m.)

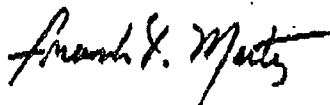
We hope you will be able to schedule time to observe the voting process both during the Early Voting period and on Election Day. In addition to reviewing voting systems' hardware and software, the manner in which voters interact with voting equipment is a crucial component of any voting system review.



The Honorable Debra Bowen
February 21, 2007
Page 2

Both of us look forward to spending time with you, and/or key members of your staff, should you be able to build time into your schedule for this election observation. Please contact City Clerk Frank Martinez at (213) 978-1020 for additional planning and details.

Sincerely,



Frank T. Martinez
Los Angeles City Clerk



Conny B. McCormack
Los Angeles County Registrar-Recorder/Clerk

c: Evan Goldberg, Chief Deputy Secretary of State



NEWS RELEASE

CALIFORNIA SECRETARY OF STATE BRUCE MCPHERSON

ATTACHMENT 3

05:111

FOR IMMEDIATE RELEASE
Wednesday, October 5, 2005

Contact: Nghia Nguyen Demovic
916-653-6575

Secretary of State Bruce McPherson Outlines New Efforts to Ensure Voter Confidence and the Integrity of Every Vote Cast *Secretary McPherson Announces Statewide Electronic Voting System Requirements and New Office of Voting System Technology*

Sacramento, CA — In a speech to the California Black Chamber of Commerce, Secretary of State Bruce McPherson announced today that he has imposed stringent new conditions on voting systems being considered for use in California elections, outlining ten critical requirements for any vendor applying for certification of voting equipment in the Golden State. Additionally, Secretary McPherson announced the creation of the Office of Voting System Technology Assessment in the Secretary of State's Office. This will be a permanent, professional and fully staffed voting system technology and testing unit and will serve as a one-stop-shop for voting system certification.

"We must take these fundamental steps to guarantee public confidence in our voting process and accountability for its results," Secretary McPherson said. "The integrity of the vote is critically important and our state's voters deserve to have the confidence that voting machines are rigorously tested and are being analyzed by the best technical experts."

The new conditions for any vendor applying for certification of voting equipment throughout California provide a step-by-step process that identifies how a voting system will be examined to ensure accuracy, security and usability. For the first time, California will have a strict and clearly articulated list of benchmarks that voting systems and their manufacturers will need to meet to be able to be certified for use in California. These requirements will be codified into state regulation.

In a memo sent to county elections officials and all vendors currently certified by the US Election Assistance Commission (EAC), Secretary McPherson noted that he will not consider voting systems unless the vendors or products have:

1. Been federally certified by the EAC-approved independent testing authorities
2. Provided full documentation and training materials of all related system materials, including promotional materials
3. Provided comprehensive use procedures applicable to California elections
4. Established a county user group for annual system review and to ensure voter accessibility
5. Deposited source code in an approved escrow facility and a copy of the source code and binary executables with his office
6. Agreed to provide the Secretary of State a working version of the system components, upon request, for testing and analysis
7. Been certified to be used together as a comprehensive system if the components have been independently certified

-more-

05:111
Page 2

8. Agreed to be combined only for purposes of aggregating vote totals or laying out their ballot types
9. Provided printing specifications for any ballots to be used with the components
10. Agreed to volume testing to simulate Election Day use.

-30-

VOTING SYSTEM REQUIREMENTS

Any new voting system to be considered for certification for use in California elections will be required to have the following features:

1. An application that includes proof of federal certification, (i.e. copies of the United States Election Assistance Commission [EAC] approved Independent Testing Authority [ITA] reports and certification number issued by the EAC).
2. All applications must include full documentation, including technical and operational specifications, operating and maintenance manuals, training materials, and copies of all promotional materials from the vendor.
3. Each system must have comprehensive use procedures applicable for use of the system in California elections in conformance with state law and Secretary of State guidelines for voting system use procedures.
4. Each vendor must establish a California County User Group and hold at least one annual meeting where all California users and Secretary of State staff are invited to attend and review the system and ensure voter accessibility.
5. In addition to depositing the source code in an approved escrow facility, each vendor must deposit a copy of the system source code and binary executables with the Secretary of State. The Secretary of State reserves the right to perform a full independent review of the source code.
6. Voting system vendors shall provide to the Secretary of State, on request, a working version of the components, including all hardware, software and firmware, of the voting system that is proposed for use in an election, for the purposes of analysis and testing. These components shall be maintained in working order by the vendor.
7. Multiple independently tested and certified voting systems may be used together to meet federal and state requirements so long as their interface is limited to exchange of aggregated vote totals and/or ballot layout.
8. Components of a certified voting system may not be combined with components of a previously but separately certified system without certification by the Secretary of State as an entirely new system.
9. The vendor for each system that utilizes paper ballots will be required to provide printing specifications for those ballots to the Secretary of State. The Secretary of State will certify printers to print ballots for each system based upon their demonstrated ability to do so. Vendors may not require exclusivity in ballot printing and must cooperate fully in certification testing of ballots produced by other ballot printers.
10. All systems will be subject to volume testing as defined by established Secretary of State standards prior to certification in California.

10/5/05

ATTACHMENT 4



DEBRA BOWEN | SECRETARY OF STATE | STATE OF CALIFORNIA
1500 11th Street, 6th Floor | Sacramento, CA 95814 | Tel (916) 633-7244 | Fax (916) 633-4620 | www.sos.ca.gov

March 22, 2007

The Honorable Zoe Lofgren, Chairwoman
Subcommittee on Elections, Committee on House Administration
1309 Longworth House Office Building
Washington, DC 20515-6157

Dear Chairwoman Lofgren:

I first want to applaud you and the subcommittee for taking on this important challenge and for inviting me to appear before the subcommittee on Friday.

I think we would all agree that it's time to solve and move past the "process" issues associated with voting by giving voters the confidence of knowing that their ballots were counted as they were cast. Once that is in place, then voters can focus solely on the policy choices presented to them on Election Day.

I am strongly supportive of changing the current system to improve the integrity of and the public confidence in our electoral process. On Friday, it's my intention to focus my testimony primarily on two main practical concerns - timing and funding.

Timing

In California, the length of time it's taken to select a new voting system has varied greatly between counties. For example, Placer County, which has 176,000 registered voters, appears to have taken about two months to select a system and negotiate a contract with the vendor. Yolo County, which has 91,000 registered voters, took approximately nine months to award a contract. San Francisco County, which has 418,000 registered voters, originally forecast an eight-month procurement process that is now entering its second year due to concerns about the type of system that was proposed to be deployed.

The length of time it takes to develop a competitive bid package, solicit and review bids, provide for public input, negotiate a contract, and buy and deploy a system will vary by state and, in California's case, by county, since each of the 58 counties buys its own voting system. That procurement process is affected by a number of things outside of the control of the elections official - namely, the amount of public input that is required, demanded and provided, the cooperation of the vendor, and the relationship between the county elections official and the county governing body.

As you're well aware, the public interest in the voting systems used across the country has exploded in recent years. That means any procurement process needs to build in time for the public to review and comment on the proposals, and for the procurement itself to change based on those comments.

The Honorable Zoe Lofgren
March 22, 2007
Page 2

The last thing any of us want is to truncate public review of any system, rushing through approval under the presumption that any solution is better than the current system, only to find ourselves back here in two or three years, having this same discussion all over again.

Funding

This is an issue I know the committee is acutely aware of, but I raise it to make three points.

First, California's counties spent at least \$162 million and probably closer to \$250 million buying voting systems to comply with the Help America Vote Act by January 1, 2006. Considering that California has approximately 10% of the total number of registered voters in the country, the cost for making significant changes in our voting systems could be over \$1 billion.

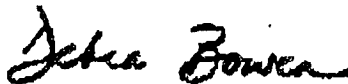
Second, I'm concerned from a financial, logistical, and voter acceptance standpoint, about requiring certain changes by 2008 that may be made obsolete by other changes that could be required by 2010. I don't think any of us want to require counties and states to buy a system that may only be used for one election cycle.

Third, in states that are required to make another change, I don't think it's unreasonable to ask the subcommittee to consider the inclusion of per capita payments for poll worker training and voter education.

Following the last two elections, I read many news articles where it was stated that the equipment performed fine, and any problems were solely a result of "human error." If poll workers and voters don't know how to operate the machines, it's simply not possible to have an election without a large segment of the population being disenfranchised. That's why I'm so committed to ensuring that whatever changes are made, we include the time and money needed to make sure elections officials, poll workers, and voters can use the machines for their intended purpose - to take part in our democratic process.

I look forward to discussing these and other issues in greater detail when I appear before the committee on Friday and thank you once again for the opportunity to provide testimony.

Sincerely,



Debra Bowen
Secretary of State

DB:elg:lf



COUNTY OF LOS ANGELES

REGISTRAR-RECORDER/COUNTY CLERK

12400 IMPERIAL HWY. - P.O. BOX 1024, NORWALK, CALIFORNIA 90651-1024 (562) 462-2716

ATTACHMENT 5

CONNY B. McCORMACK
Registrar-Recorder/County Clerk

March 30, 2007

Honorable Ron Calderon
Chair, Senate Committee on Elections,
Reapportionment and Constitutional Amendments
State Capitol, Room 5080
Sacramento, CA 95814

Honorable Curren Price
Chair, Assembly Committee on Elections and Redistricting
State Capitol
PO Box 942849
Sacramento, CA 94249-0051

Dear Senator Calderon and Assemblymember Price:

This is a follow-up to our recent telephone conversations regarding the release by the Secretary of State on March 22, 2007 of draft criteria for a top-to-bottom review of electronic voting systems certified for use in California. The draft criteria contained a truncated 8-day period for public comment which ended today.

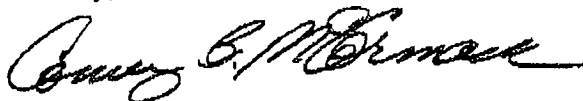
County election officials are supportive of comprehensive voting systems testing and to the completion of federal and state testing requirements prior to acquisition of voting systems. Indeed, all 58 California counties successfully implemented new voting systems by the November 2006 statewide election that not only fulfilled these requirements but met the most stringent state testing of any voting systems in the U.S.

As we discussed last week, county election officials are concerned about the content, scope and tone of the Secretary of State's draft criteria, especially due to the fact that the words decertification or withdrawal of certification of voting systems are mentioned seven times throughout the document. The California Association of Clerks and Election Officials (CACEO) submitted an extensive response to the draft criteria. In addition to the CACEO response (attached), several county registrars submitted individual responses (mine is attached) as did The California State Association of Counties (CSAC) (also attached). The CSAC letter stated in part: "A complete review and possible decertification of voting systems at this critical junction in the electoral process, with the newly created Presidential Primary election a mere ten months away, will cause untold disruption for counties, the state of California, and most importantly, registered voters."

California has experienced significant turmoil over the past 5 ½ years as a result of two Secretaries of State making decisions to decertify voting equipment that was in use to tabulate official results of numerous elections. The political system of democracy upon which our country is based involves appropriate checks and balances as opposed to bestowing unilateral authority in one official. In researching the California Elections Code, in years past a multi-agency Voting Systems Commission was empowered to make decisions with regard to approval or de-certification of voting systems. Up until the 1980s, that Commission was comprised of the Secretary of State, the Governor and the Attorney General, or their representatives, and included involvement of the Chairs of the Elections Committees in the California Senate and Assembly. That Commission was disbanded in the early 1980s, apparently due to a lack of activity with regard to voting systems. At that time, state law was changed to empower the Secretary of State with complete authority involving such voting equipment decisions.

Restoring appropriate oversight and re-introducing checks and balances into this process appears warranted at this time. In that regard, please consider amending a current legislative proposal to include re-establishing a Voting Systems Commission. Such action would enable legislative hearings to take place with regard to this significant issue. Thank you for your consideration of this request.

Sincerely,



Conny B. McCormack

Registrar-Recorder/County Clerk

c: Honorable Don Perata, Senate President pro Tem
Honorable Fabian Núñez, Speaker of the State Assembly

Attachments



ATTACHMENT 6

March 29, 2007

Secretary Debra Bowen
California Secretary of State
1500 11th Street
Sacramento, California 95814
ATTN: Voting Systems Review, 6th Floor

Dear Secretary Bowen:

The California State Association of Counties (CSAC) and the Regional Council of Rural Counties (RCRC) wish to respond to your request for public comments on the Draft Criteria for a Top-to-Bottom Review of Electronic Voting Systems released by your office on March 22, 2007.

As representatives of California's 58 counties, our organizations have significant concerns with the Draft Criteria as written. California's counties currently employ a variety of voting systems, all of which have passed comprehensive federal testing standards as well as California's more rigorous thresholds for security, accuracy, and reliability. A complete review and possible decertification of voting systems at this critical juncture in the electoral process, with the newly created Presidential Primary election a mere ten months away, will cause untold disruption for counties, the state of California, and most importantly, registered voters. In fact, it seems the Draft Criteria do not take into account that independent testing and monitoring of last fall's November election resulted in a 100 percent accuracy rating for more than eight million votes cast throughout the Golden State.

Furthermore, any voting systems review must include precise and reasonable standards, as well as clear and measurable objectives. The Draft Criteria as currently written do not meet any of these basic provisions; and thereby will not only jeopardize the integrity of voting systems, but also threaten to unnecessarily erode voter confidence.

Lastly, the Draft Criteria do not contain any mention of funding for the administration of the review, nor for any remedy that the review might recommend. Counties must have an adequate source of new funding to reasonably comply with any review of voting systems or potential changes in requirements.

Despite these concerns, counties stand ready to assist you in developing review standards in the interest of completing a comprehensive, orderly, and timely review of voting systems in use in California. We all wish to meet our common goal of fair, accurate, and accessible elections, and thereby appreciate the opportunity to submit these comments.

Sincerely,

Karen Keene
Legislative Representative
CSAC

Paul Smith
Director of Legislative Affairs
RCRC